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TRA DOCKET ROOM

June 13, 2005

Jean Stone, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

**Re: *IN RE: Petition of King's Chapel Capacity, LLC for Certificate of Convenience and Necessity to Serve an Area in Williamson, County, Tennessee Known as Ashby Community***  
**Docket Number: 04-00335**

Dear Hearing Officer Stone:

In brief response to the June 7, 2005, filing by King's Chapel in the above captioned proceeding, I would respectfully direct your attention to the "law of the case" doctrine as set forth in Memphis Publishing Company v. Tennessee Petroleum Underground Storage Tank Board, 975 S.W.2d 303, 306 (Tenn.1998). In that opinion, the Tennessee Supreme Court explained that, once an issue has been addressed on appeal, the appellate decision establishes "the law of the case" and generally must be followed "upon remand by the trial court and by an appellate court if a second appeal is taken." *Id.*

In this case, the Hearing Officer decided to hold these proceedings in abeyance pending decisions by the Williamson County Chancery Court and the Tennessee Department of Environment and Conservation. Her decision was appealed and affirmed by the Directors. That ruling is now the "law of the case."

At this time, the Chancellor has issued a ruling (which is the subject of a motion for an interlocutory appeal) but TDEC has not. Despite not having a ruling from TDEC, King's Chapel has asked the TRA to proceed with this application, arguing that the earlier decision to hold this matter in

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abeyance should be reversed.<sup>1</sup> Under the "law of the case" doctrine, however, neither the Hearing Officer (the "trial court") nor the TRA Directors (the "appellate court") may revisit this issue. The abeyance question has been settled, and these proceedings may not re-commence until the conditions of the earlier order have been met.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

*Henry Walker* /dc  
By: Henry Walker

HW/djc

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<sup>1</sup> In its Motion to resume these proceedings, King's Chapel stated that "all the conditions" of the Hearing Officer's Order had been met. Motion, at 1. As TWS noted in response, that statement was not accurate. Now, King's Chapel acknowledges that TDEC has not yet ruled but urges the TRA to "mov[e] forward with this proceeding" contrary to its prior ruling. Reply, at 2. TWS therefore brings the Authority's attention to the "law-of-the-case" doctrine.

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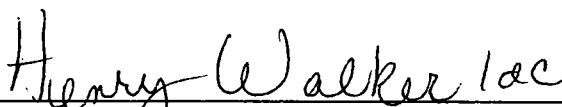
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, postage prepaid, to:

Richard Militana  
Militana & Militana  
5845 Old Highway 96  
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Charles B. Welch, Jr.  
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Historic Castner-Knott Building  
618 Church Street, Suite 300  
Nashville, TN 37219

on this the 13<sup>th</sup> day of June 2005.

  
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Henry M. Walker